

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**CHRISTINA MONTOYA,**

Plaintiff,

vs.

Civ. No. 07-1078 WDS/ACT

**AMERICAN ONLINE, INC.,**

Defendant.

**MAGISTRATE JUDGE'S PROPOSED FINDINGS  
AND RECOMMENDED DISPOSITION**

**THIS MATTER** comes before the Court upon Plaintiff's Motion to Proceed *in Forma Pauperis* with Financial Affidavit Pursuant to 28 U.S.C. § 1915 filed October 26, 2007 [Doc. 2], the Court's Order of January 3, 2007 [Doc. 5], and Plaintiff's supplemental Affidavit filed January 9, 2008 [Doc. 6]. Based on the Court's review of all the pleadings and being otherwise advised in the premises, the Court will recommend that Plaintiff's Motion to Proceed *in Forma Pauperis* be denied.

**PROPOSED FINDINGS**

1. In Plaintiff's Motion to Proceed *in Forma Pauperis* filed October 26, 2007, Plaintiff stated under oath that she had no income. Plaintiff also stated that she had a mortgage payment of \$1100 per month, an automobile payment of \$200 per month, utility payments between \$90-250 per month and two dependents. The Court permitted the Plaintiff to file a supplemental Affidavit

explaining the discrepancies.

2. Plaintiff filed a supplemental Affidavit stating that she receives child support from Patricio Mejia in the amount of \$945.00 a month, and “he helps me with other bills to make ends meet.” [Doc. 6.] She further stated that after filing her complaint, she became employed and earned approximately \$2000.00 a month.

3. Section 1915(a) states that a district court “may authorize the commencement...of any suit [or] action...without prepayment of fees or security therefor, by a person who submits an affidavit that includes a statement of all assets such [person] possesses that the person is unable to pay such fees and give security therefore.” *See Lister v. Dep’t of the Treasury*, 408 F.3d 1309, 1312 (10th Cir. 2005) (noting that section 1915(a) applies to all persons applying for IFP status). Thus “to succeed on a motion to proceed IFP, the movant must show a financial inability to pay the required filing fees.” *Id.*

4. Plaintiff has not demonstrated that she is financially unable to pay the filing fee in this matter.

### **RECOMMENDED DISPOSITION**

I recommend that Plaintiff’s Motion to Proceed *in Forma Pauperis* with Financial Affidavit Pursuant to 28 U.S.C. § 1915 be denied.

Timely objections to the foregoing may be made pursuant to 28 U.S.C. Sec. 636(b)(1)(C). Within ten days after a party is served with a copy of these proposed findings and recommendations that party may, pursuant to § 636(b)(1)(C), file written objections to such proposed findings and recommendations with the Clerk of the United States District Court, 333 Lomas N.W., Albuquerque, NM 87102. A party must file any objections within the ten-day

period allowed if that party wants to have appellate review of the proposed findings and recommendations. If no objections are filed, no appellate review will be allowed.

  
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**ALAN C. TORGERSON**  
**UNITED STATES MAGISTRATE JUDGE**